



42 CFR Part 2 Final Rule: What Has Not Changed

The following provisions of 42 CFR Part 2 *have not* substantively changed under the Final Rule, although non-substantive and clarifying changes were made. (For example, in many places the Final Rule updated terminology and incorporated previously-released guidance into the regulations.) The provisions of 42 CFR Part 2 that *have* changed are covered in Legal Action Center's webinar, "[42 CFR Part 2: What Has Changed under the Final Rule](#)," and will be covered extensively in the forthcoming edition of [Confidentiality and Communication](#).

Provisions Which Have Not Substantively Changed:

1. Who must follow 42 CFR Part 2
2. What information is protected by 42 CFR Part 2
3. How information protected by 42 CFR Part 2 may be disclosed
4. Prohibition on re-disclosure
5. The following exceptions to Part 2's general rule against disclosing information:
 - i. Internal communications
 - ii. Reporting child abuse or neglect
 - iii. Reporting crimes on program premises or against program personnel
 - iv. Court order
 - v. No patient-identifying information

Brief Overview of Provisions Which Have Not Substantively Changed:

1. Who must follow 42 CFR Part 2
 - "Federally assisted" + "program" = "Part 2 program"
 - "Part 2 programs" must follow 42 CFR Part 2
 - Who is "federally assisted"?
 - Receives federal funds in any form (even if not used for substance use disorder) services
 - Assisted through IRS (e.g., tax exempt status, tax deductions for contributions)

- Authorized to conduct business by the federal government (e.g., DEA license to provide methadone, receives Medicaid or Medicare reimbursement)
- Conducted directly by federal government, or by state/local government agency that receives federal funds which could be spent for substance use disorder services (but don't have to be)
- Who is a "program"? 3 definitions...
 1. Individual or entity other than general medical facility that holds itself out as providing, and does provide, SUD diagnosis, treatment, or referral for treatment.
 2. An identified unit within a general medical facility which holds itself out as providing, and does provide, SUD diagnosis, treatment, or referral for treatment.
 3. Medical personnel or other staff in a general medical care facility whose primary function is the provision of SUD diagnosis, treatment, or referral for treatment, and who are identified as such.

2. What information is protected by 42 CFR Part 2

- Information that identifies someone as having a past or current substance use disorder, or being a past or current patient in a "Part 2 program"

3. How information protected by 42 CFR Part 2 may be disclosed

- Still may only be disclosed with written patient consent or if another exception applies
- No new exceptions!

4. Prohibition on re-disclosure

- Prohibition on re-disclosure still applies to Part 2-protected information
- Still must send notice prohibiting re-disclosure when disclosing Part 2 information pursuant to patient consent
- Note: Although there were no substantive changes to the prohibition on re-disclosure, a clarifying change was made to the required notice language. For a new sample notice, visit LAC's website: <https://lac.org/resources/substance-use-resources/confidentiality-resources/sample-forms-confidentiality/>

5. The following exceptions to Part 2's general rule against disclosing information:

- Internal communications
- Reporting child abuse or neglect
- Reporting crimes on program premises or against program personnel

- Court order
- No patient-identifying information

For More Information...

For more detailed information about 42 CFR Part 2, including what has and has not changed, you may:

- ✓ Purchase the latest edition of [*Confidentiality and Communication*](#).
- ✓ Call [Actionline](#), if your state subscribes. If your state does not subscribe, contact your state agency that licenses/oversees substance use disorder programs and tell them you would find such a service helpful.
- ✓ Watch Legal Action Center's webinar, "[42 CFR Part 2: What Has Changed under the Final Rule?](#)"

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